

United States Constitutional Law: Theory, Practice, and Interpretation

Class 3: Individual Rights

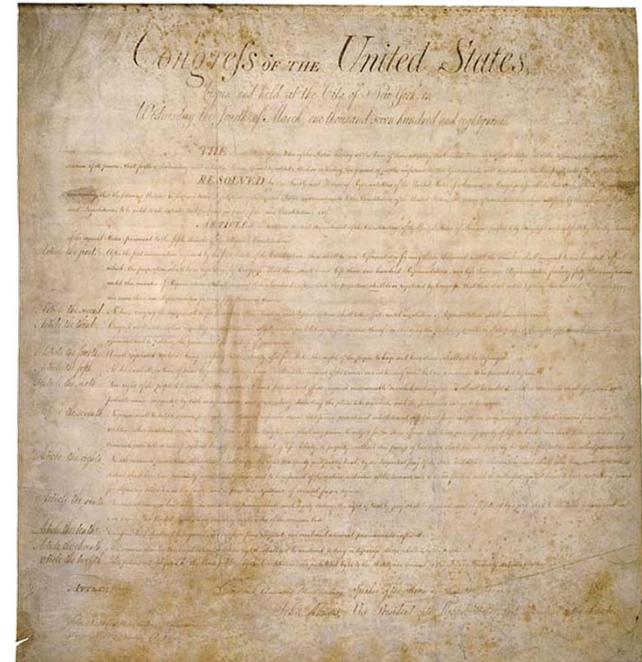
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United States Constitutional Law: Theory, Practice, and Interpretation

- Introduction
- Governmental structure
- Individual rights
- Enforcing the Constitution
- Interpreting the Constitution
- The Constitution in action



Individual Rights

- The history and theory of individual rights
- The United States Constitution's Bill of Rights
 - The First Amendment and freedom of speech
 - The Second Amendment and the right to bear arms
 - The Fifth Amendment and the right to just compensation
 - Constitutional criminal procedure
 - The Fourth Amendment and searches and seizures
 - The Fifth Amendment and the right to remain silent, the right to grand jury indictment, the prohibition against double jeopardy, and the right to due process
 - The Sixth Amendment and the right to confront adverse witnesses and to trial by jury
 - The Eighth Amendment and the prohibition against cruel and unusual punishment
 - The Ninth and Tenth Amendments

Constitutionalism: Basic Principles

- Authority and legitimacy of government depends a writing that defines and limits three basic forms of governmental power: legislative power; executive power; and judicial power.
- Contrast with a state ruled by an absolute sovereign, “Rex”
- Limitations on government power
 - Scope of authority (federalism and separation of powers)
 - Mechanisms used to exercise power (procedural requirements)
 - Civil rights
- Entrenchment of limitations
- Writtenness
- Associated with John Locke and the Framers of the United States Constitution

The Declaration of Independence (1776)



The Declaration of Independence (1776)

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

The Declaration of Independence (1776)

We hold these truths to be self-evident, that all men are created equal,

That they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,

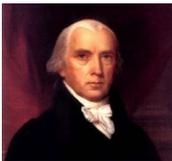
That whenever any Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Federalists v. Anti-Federalists



Federalists

- Supported the Constitution and a strong central government
 - Alexander Hamilton, James Madison, John Jay
 - *Federalist Papers*: Series of articles written in defense of the Constitution



Anti-Federalists

- Supported a weaker central government; supported state power
- Opposed the Constitution
- Wanted a Bill of Rights included
- Samuel Adams, Patrick Henry



The Bill of Rights



- First 10 amendments to the United States Constitution
- Limitations on power of federal government; reservation of rights to states and to the people

History of the Bill of Rights



- First proposed at Convention by George Mason of Virginia on September 12, 1787
 - Briefly debated; quickly defeated
 - Why?
- Opposition to ratification of Constitution by Anti-Federalists
- Introduced by Madison to 1st Congress in 1789
 - In substance, influenced by Virginia Declaration of Rights (1776), English Bill of Rights (1689) and Magna Carta (1215)
 - Adopted and sent to states
- Ratified by three-quarters of 13 states in December 1791

Preamble to the Bill of Rights



THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution. RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; ... pursuant to the fifth Article of the original Constitution

The Bill of Rights



- 1st: Establishment; free exercise; free speech; free press; assembly; petition
- 2nd: Bear arms
- 3rd: Quartering soldiers in peacetime
- 4th: Search and seizure; warrants
- 5th: Grand jury indictment; double jeopardy; self-incrimination; due process; takings
- 6th: Speedy trial; public trial; notice of charges; impartial jury; confrontation; compulsory process; counsel
- 7th: Trial by jury in federal civil cases
- 8th: No excessive bail or fines; no cruel and unusual punishment
- 9th: Enumeration of rights does not disparage rights retained by people
- 10th: Powers not delegated to federal government reserved to States or to people

Miscellaneous

- What was the date of ratification of last “right” of originally-proposed Bill of Rights?
 - 1992
 - Twenty-Seventh Amendment: “No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.”
- Why little judicial impact until 20th Century?

Incorporation of Bill of Rights Through the Fourteenth Amendment

The Civil War (1861-1865)

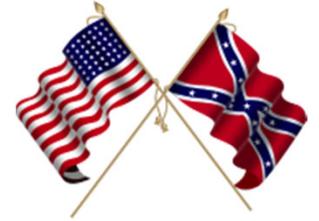


Thirteenth Amendment (1865)



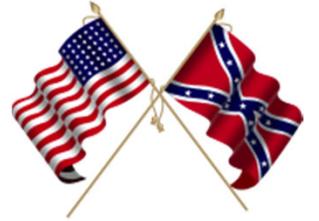
1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
2. Congress shall have power to enforce this article by appropriate legislation.

Fifteenth Amendment (1870)



1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.
2. The Congress shall have power to enforce this article by appropriate legislation.

Fourteenth Amendment § 1 (1868)



All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Total Incorporation Approach

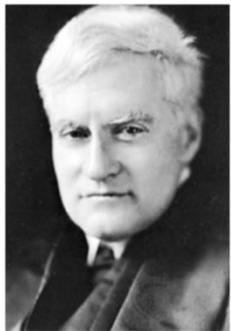


“[O]ne of the chief objects that the provisions of the [Fourteenth] Amendment’s first section, separately, and as a whole, were intended to accomplish was to make the Bill of Rights applicable to the states.” See *Adamson v. California* (U.S. 1952) (Black, J., dissenting).

Fundamental Rights Approach

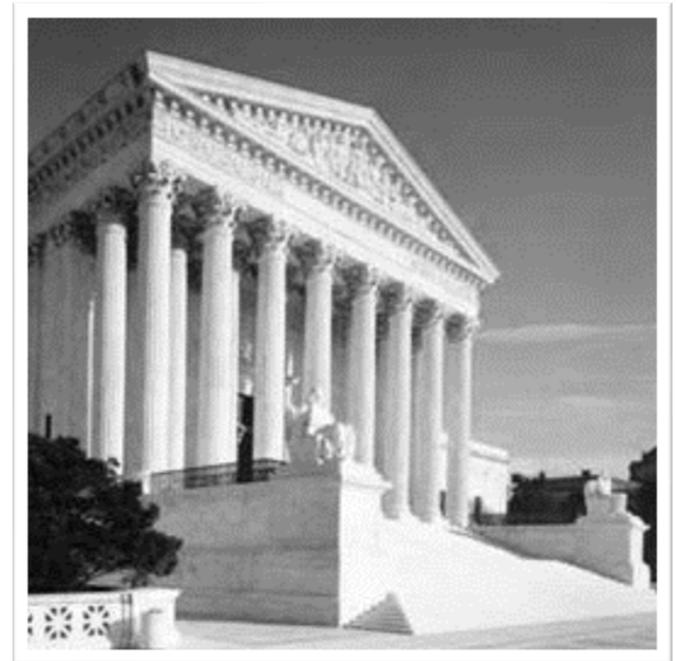


The Fourteenth Amendment “neither comprehends the specific provisions [of the Bill of Rights] nor is it confined to them. The Due Process Clause . . . Has independent potency,” and requires states to honor principles “so rooted in the traditions and consciences of our people as to be ranked as fundamental.” A right is “fundamental” if it is “of the very essence of a scheme of ordered liberty.”



Selective Incorporation

“Fundamental rights” contained in the Bill of Rights apply to the states including “all the subtleties and refinements born of history and embodied in case experience developed in the context of federal adjudication” — “all of the bag and all of the baggage.”

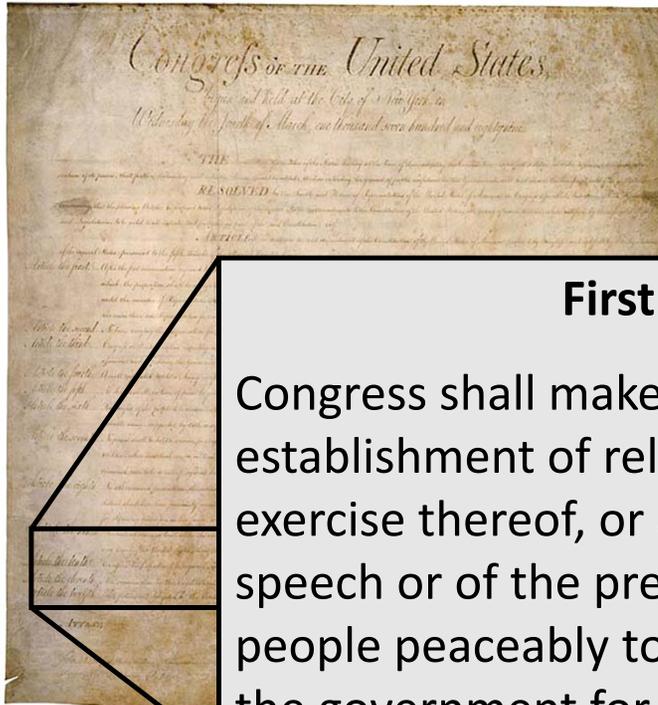


Ramos v. Louisiana: Argued October 7, 2019

Does the Sixth Amendment right to trial by jury and conviction by a unanimous jury apply as against the states rather than only as against the federal government?



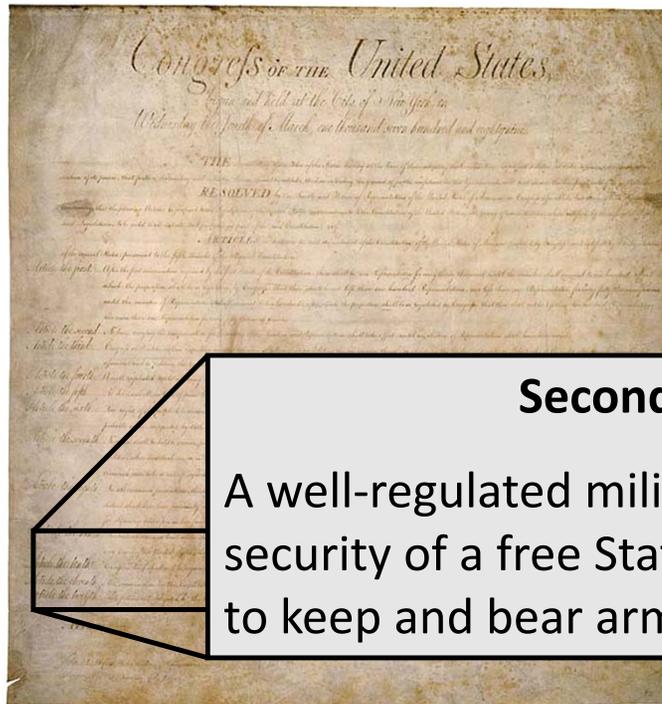
First Amendment



First Amendment

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

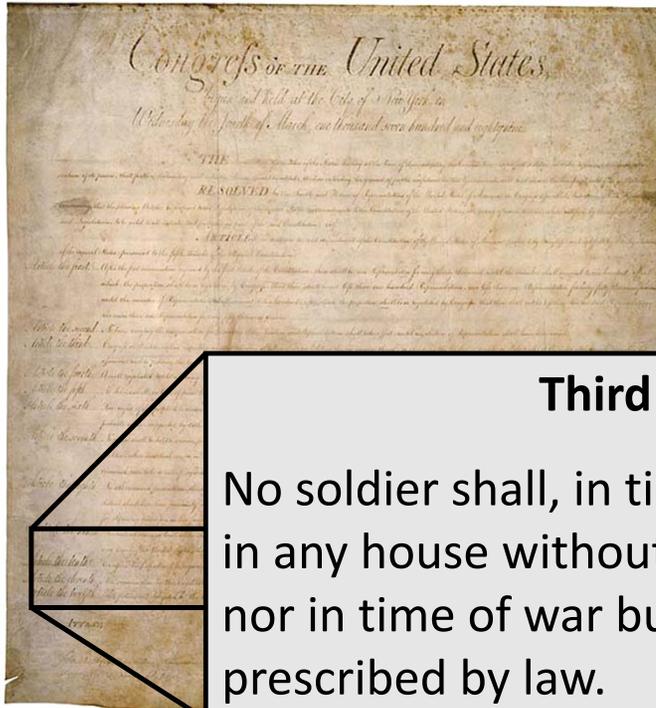
Second Amendment



Second Amendment

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

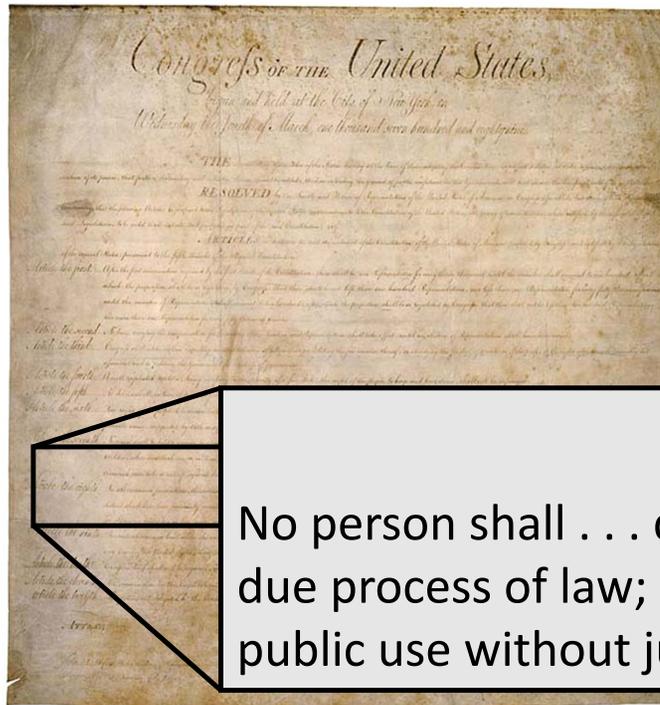
Third Amendment



Third Amendment

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

Fifth Amendment



Fifth Amendment

No person shall . . . deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

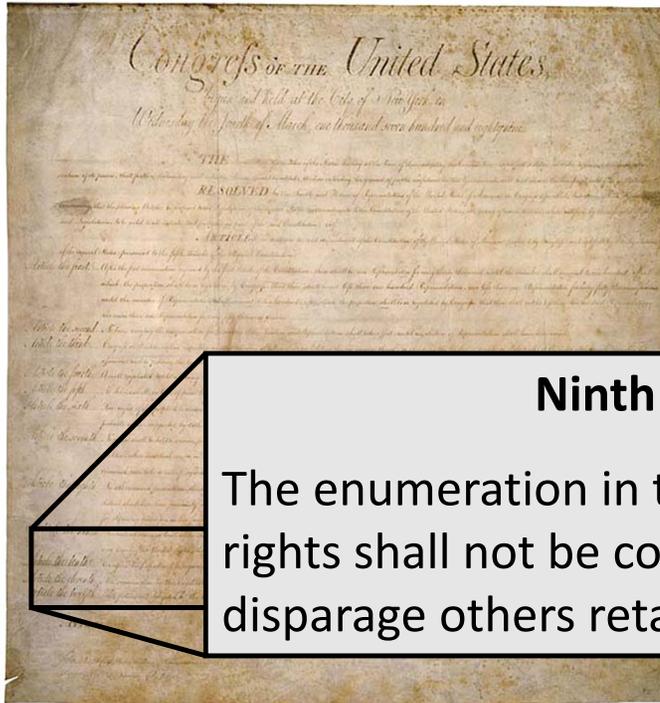
Seventh Amendment



Seventh Amendment

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law.

Ninth Amendment



Ninth Amendment

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Tenth Amendment



Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.